

CHAPTER 43-25 MESSAGE THERAPISTS

43-25-01. Short title. Repealed by S.L. 1997, ch. 375, § 11.

43-25-02. Definitions.

1. "Board" means the North Dakota board of massage.
2. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, including superficial hot and cold applications, hydrotherapy, reflexology, and the use of salts or lubricants. "Massage" does not include diagnosing or treating diseases, manipulating the spine or other joints, or prescribing or administering vitamins.
3. "Massage establishment" means any place of business in which massage is practiced.
4. "Massage therapist" means an individual who practices massage.

43-25-03. Massage therapists to be licensed. A person may not:

1. Practice massage, attempt to practice massage, or teach massage techniques, for a fee or gratuity or as a free demonstration, without a license issued under this chapter;
2. Operate or conduct a massage establishment unless it meets the requirements adopted by the board;
3. Employ an unlicensed person to perform a massage; or
4. Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." without a license issued by the board.

43-25-04. Exemptions. The following persons are exempt from this chapter:

1. Schools that furnish massage services to their student athletes.
2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist.
3. Any individual who is engaged in a profession or occupation for which the individual is licensed by this state, as long as the individual's activities are performed in the course of the bona fide practice of the individual's profession or occupation and as long as the individual does not represent to the public that the individual is a massage therapist or is engaged in the practice of massage.
4. A health spa or similar business to the extent the spa or business is performing superficial applications, including salt glows and contouring.

43-25-05. Board of massage - Terms. The governor shall appoint a board of massage, to consist of five members. Three of the members of the board must be massage therapists who are licensed in this state. The members must be appointed for three years, staggered so that the term of one member expires each year. Two additional members, who may not be massage therapists or immediate family members of a massage therapist, must be appointed as consumer members for two-year terms, staggered so that the term of one member expires each

year. Each member of the board holds office until that member's successor is appointed and qualified.

43-25-05.1. Powers and duties of the board. The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board shall periodically inspect or cause to be inspected all massage establishments. The board and its agents are authorized to enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.

43-25-06. Removal of members of board of massage - Officers of the board - Meeting. The governor may remove from office members of the board for neglect of duties as required by this chapter or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on the member's resignation or death.

The board shall within two weeks after its appointment meet at some convenient place within the state and shall annually elect a president from their own members, and a secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties.

43-25-07. Requisites for application and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate, and of good moral character and temperate habits is entitled to apply to the board. An applicant may receive a license from the board as a massage therapist if the applicant:
 - a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board;
 - b. Passes an examination conducted or approved by the board; and
 - c. Pays the required fees, which must accompany the application to the board.
2. Any applicant failing to pass the examination is entitled to a reexamination within six months upon payment of an additional fee of fifty dollars or a lesser amount established by the board, but two reexaminations exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

43-25-08. Fee for license. The fee to receive a license as a massage therapist is one hundred fifty dollars or a lesser amount established by the board.

43-25-09. License - Display - Renewal - Renewal fee.

1. Each license must be conspicuously displayed at the place of practice.
2. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at

least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than six units of a licensee's annual continuing education requirements may be by remote education. To qualify as continuing education, the remote education must be sponsored by a nationally recognized provider and must be board-approved for content and suitability.

3. If the board reasonably believes a massage therapist or applicant is in a physical condition jeopardizing the health of those who seek relief from the individual, the board may require the individual to have a physical examination by a competent medical examiner. If the individual has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.
4. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee and production of a new certificate of physical examination.
5. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

43-25-10. Revocation of license - Complaints.

1. The license of a massage therapist may be denied, revoked, suspended, or placed on probation for any of the following grounds:
 - a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
 - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.
 - c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
 - d. The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to the extent the licensee is incapacitated from performing the professional duties of a massage therapist.
 - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or vitamins, or the licensee infringes on any other licensed profession.
 - f. The licensee is guilty of willful negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
 - g. The licensee has violated this chapter or any rule adopted by the board.
2. A complaint may be submitted to the board by any person or on its own motion. A complaint must be signed by the complainant and verified under oath.
3. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

43-25-11. Provisions for hearing - Notice. Repealed by S.L. 2001, ch. 384, § 15.

43-25-12. Power of board to revoke, suspend, or annul licenses. Repealed by S.L. 2001, ch. 384, § 15.

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record book of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of this state. The secretary-treasurer shall furnish to any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer may prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed.

43-25-14. Compensation of board members - Clerks. The board members shall receive compensation in an amount of sixty-two dollars per day or prorated for partial days for each day or portion of a day the member is actually engaged in the performance of official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. The secretary-treasurer may receive additional compensation as set by the board. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

43-25-15. Disposition of money received by the board. Repealed by S.L. 1971, ch. 510, § 15.

43-25-16. Other laws unaffected by this chapter. Repealed by S.L. 2001, ch. 384, § 15.

43-25-17. Practitioners at time chapter becomes effective. Repealed by S.L. 1961, ch. 291, § 2.

43-25-18. Reciprocity. Any person who has been duly licensed in another state to practice massage in a state that has and maintains a standard of practice which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in this practice for two years or more immediately before filing of an application to practice in this state, and who submits to the board a duly attested certificate from the examining board of the state in which registered, certifying to the fact of registration and being a person of good moral character and of professional attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination.

43-25-19. Penalty for violation. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the board may initiate a civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person.